that has been purposely made somewhat difficult of modification; a character of law that is in all its outlines a bill of rights. Your Honor recalls that the Constitution of the United States adopted by the convention of 1787 was perilously near failing of adoption by nine States, by reason of the absence from the Constitution of a bill of rights, and that probably the adoption of the Constitution was only secured upon a confident belief that the methods of amendment provided in it would be immediately used to incorporate these declarations of rights, which some of the States deemed essential, and that almost immediately following the organization of government under the Constitution, this bill of rights, in the form of the first ten amendments to the Constitution, was adopted. In the case of the Constitution of the United States it is true that it provides a government of specified power. In the case of the States, all power not given to the general government and not prohibited by the Constitution of the United States to the States is reserved —I ask your honor to note the distinction—is reserved not to legislatures of States, but to the people of the States. It will not do, then, to say that in construing the Constitution of a State we are to assume that all legislative power, except those powers granted to the general government, and those powers prohibited by the Constitution of the general government to the States, inhere to the legislatures of the States, or the executives of the States, as the power may be legislative or executive. The people of the respective States before the adoption of the Constitution of the United States had formed their own constitutions. These consisted of a frame of government constituting universally, I believe, three great departments, giving them authorized powers and putting on all of them restrictions. Our own Constitution contains a formal bill of rights, and it contains limitations upon executive and legislative power. Therefore, when we come to consider the powers of the Legislature of Indiana we are to consider that body as a body constituted under the Constitution of Indiana, and not having general legislative powers with the exceptions named, but with the added exceptions that the people of Indiana have placed in their own Constitution. In other words, the people have declared in this State and in every State that there are certain things which should not be done at all, either by the general government or by the state government. These instruments are in the nature of powers of attorney to governmental agents. The Constitution, as your honor suggested in a remark yesterday, is, according to the American idea of the making of constitutions, the act of the people themselves directly. Every provision of the Constitution of Indiana has been submitted to the referendum. Every voter of the State—not through an agent, but directly, at the ballot box—has expressed himself upon its provisions. The interpretation of these instruments, the enforcement of these limitations, is with the courts. If the Legislature, or its Congress were left free to determine the limitations of their powers, our government might be wrecked and probably would have been before this time.

TRIBUTE TO FEDERAL COURTS.

I think there is nothing in the whole history of our government that more illumines and glorifies the wisdom of those who framed our institutions than the usefulness which we have observed in the federal judiciary. The United States could almost as well have lost Washington as John Marshall. It was the federal power to interpret, finally, ultimately, all of the Constitution of the United States and all laws made under it, that has secured the orderly development of the government—the progressive and intelligent application of principles to new conditions that has preserved our institutions. As I have said, the federal courts have the ultimate determination of all questions involving the interpretation of the Constitution and laws of the United States, but it is not conversely true that the state courts have in all cases an exclusive or ultimate power to construe, interpret and apply their own constitutions as to all persons. The courts of the United States have a jurisdiction that depends in part upon the questions involved and in part upon the citizenship of the parties before the court. It was thought necessary to give to the citizen of one State a right to seek the tribunals of the United States, as impartial tribunals, that would be free from local influence and prejudice when he had a contention with a citizen of another State, and the duty of the courts of the United States, according to their own conscience and judgment, to interpret the laws and Constitution of one State when that interpretation is invoked by a citizen of another State is just as obligatory as is the duty to interpret the Constitution and laws of the United States. Nothing has more saved the courts of the United States than their quiet independence in the assertion of their constitutional powers.

It has been suggested here that there was some intrusion—or that intrusion was invoked by the complainant here into matters that belonged exclusively to the State of Indiana. It is not true. Whenever a citizen of New York, or of Ohio, brings an action in this court and his rights depend in any measure upon the interpretation of the Constitution of Indiana, or of any law of Indiana, your Honor has not only the same right that the state courts would have to pronounce judgment, but you act just as independently in the case as the state courts can act. There has come to be a rule that generally, where a question of the interpretation of a state constitution, or of a state law, was involved, and the highest court of the State had passed judgment upon the question, until there had come to be a settled rule—until the question might be considered as settled—that in such cases the courts of the United States usually follow the courts of the State in the interpretation of its own Constitution and laws. It is a curious incident here, that these gentlemen who suggest that there has been some invasion—some attempt to put a hand over the Supreme Court, as it was expressed by one of the counsel—should cite here and rely upon the decision of Judge Sawyer, in which he squarely refused to abide by a decision of the Supreme Court of California interpreting its own Constitution. I think it is a constitutional right of a citizen of another State to invoke the protection of the United States courts, except where the state courts have already interpreted its Constitution and laws, so that the question may be regarded as a settled rule—a case in which a court, as to matters wholly within the State, would apply the doctrine of 'stares decisis.' In all other cases this court, when its jurisdiction is invoked, even if it be upon the question of citizenship alone, is not invading the constitutional powers of the State, is not asking the Supreme Court of the State to sit at its feet, but is exercising a constitutional power which it cannot evade and which it should exercise, not timorously and fearfully, but in the light of good conscience and courage. The courts owe the legislature deference and, in the consideration of laws that have been passed, the enactment, when it is arraigned, should be considered carefully and with deference to the high authority that passed it. But, while this deference is shown to the legislative action, the court regards the Constitution not simply with respect, but regards it with reverence. I shall show your Honor, as I progress that a 3-cent fare for Indianapolis would be dearly bought for the people of the State of Indiana, and dearly bought for the citizens of Indianapolis, if these constitutional provisions are to be rested on the contentions of those who here represent the city and the State. A local advantage, a temporary advantage, cannot be sought at the cost of the relaxation or the misapplication of these fundamental principles which are embodied in our Constitution.

FEDERAL QUESTIONS.

But we have in this case, if your Honor please, not only a jurisdiction based upon citizenship, but we have federal questions involved. I shall argue to your Honor presently that the provision of the Constitution of the United States forbidding a State to pass a law impairing the obligation of contracts is under consideration here, and that this legislation is subject to that prohibition. I shall ask your Honor to consider the question whether, under the fourteenth amendment, which runs upon the same line with that provision of our own bill of rights which prohibits the Legislature from granting privileges or immunity to any class that are not granted to all others upon equal terms—that under that provision of the federal Constitution this law can be arraigned. There was a suggestion yesterday by your Honor that the complainant in this case having an interest that the three-cent-fare bill should not take effect, and the defendant company having an interest also that it should not take effect, might raise some question of jurisdiction. My first answer is that this bill does not depend upon the citizenship of the parties; that it might have been brought by the Citizens' Street-railroad Company in this court. Some years ago—and the case is still pending in the Supreme Court of the United States—the Citizens' Street-railroad Company did bring a bill in the United States District Court involving the question of the power of the city, exercising the powers conferred by the State and acting in a legislative capacity, to impose a limitation of time upon its right to use the streets. There was a federal question involved. The City Railway Company, a corporation of Indiana, was the defendant in the particular case, and the Citizens' Street-railroad Company was the complainant. Both Judge Woods and Judge Baker sat in the case—Judge Baker first passed upon the question himself—and agreed in holding that a federal question was presented. The rule is well settled that whenever a federal question is presented, no matter how it may ultimately be determined by the court, that the case is one of federal jurisdiction and that the court must pass upon the question. When such a question is involved the court will go through with the whole case and decide all that is presented and not divide the case up, considering a part of it and sending a part to be tried elsewhere.

ANSWER TO ATTORNEY GENERAL.

I want to speak for a moment upon the objection presented by the attorney general to the jurisdiction of this court over the prosecuting attorney for the Nineteenth judicial district of Indiana. The attorney general says that the prosecuting attorney is a judicial officer. I deny it. I deny that any judicial function is devolved upon him. I deny that it would be competent to confer judicial powers upon him. Our Constitution declares that the judicial power of the State shall be vested in a Supreme Court and in circuit courts, and in such inferior courts as the Legislature may constitute. The judicial power is there lodged. We have a provision of our Constitution that a judicial officer shall not be a candidate for any other office during the time for which he has been elected to serve. Does the attorney general suppose that that would apply to a prosecuting attorney? He exercises no judicial functions. He is provided for in the act which is entitled "The Judiciary." But so are lawyers provided for there. So the clerk of the Supreme Court is provided for, and so other officers of that class are constituted by this provision entitled "The Judiciary," but nobody ever thought before that these were judicial officers. It is not a judicial act that is sought to be restrained. It is an action in connection with the courts, but the bringing of a suit is no more a judicial act when the prosecutor brings it than when I bring it. In considering this question whether this is a suit against the State I think we would do well to inquire a little into the origin of the eleventh amendment to the Constitution. What was it? The case of Chisholm vs. Georgia—a very noted case and one in which principles were enunciated that have been of inestimable value—was a direct suit by Chisholm against the State of Georgia to collect money on a claim which he held against the State, and the opinion of the court—by Chief Justice Jay, if I am not mistaken—was that under the Constitution persons having money claims against the State might sue them in the courts of the United States. The result was a great deal of popular excitement and clamor. It was thought to derogate from the dignity of the states and from their just powers that citizens of other states could sue them on their bonds—on express contracts or implied contracts — in the courts of the United States and enforce their collection through the marshals of the United States. Your Honor will see the line upon which the decisions have run. In all cases, as in the Virginia case, where there was a repudiation of the State's obligation to pay certain bonds, where the effect of the litigation, though brought against individuals, was to influence the matter of the collection of a debt against a State, to bring the State—by crippling her machinery in some way—into a position where the rights of a creditor of the State would be improved, and her capacities of defense and her control over the subject would diminish—following naturally upon the historical facts to which I have alluded as to the origin of the eleventh amendment—the Supreme Court of the United States has held that such suits, whatever the form might be, were suits against a State, and could not be maintained.

STATE OFFICERS DEFENDANTS.

On the other hand, where there has been no question of contract with the State, where there has been no judgment to be rendered against the State, either directly or indirectly, where its pecuniary interests are not to be affected at all, where it is simply a question of restraining the action of some one of its officers, a different rule has been applied. I call attention to the Pennoyer case, in the 140th United States Reports. This is an opinion by Justice Lamar; it is later than the Ayer case, upon which Mr. Ketcham so much relied. Justice Lamar undertakes to classify these cases, and says there are two general classes. The first class is where the suit is brought against the officers of the State as representing the State's action and liability, thus making it, though not a party to the record, the real party against which judgment will so operate as to compel it to specifically perform its contract. Under that classification he puts the Ayer case. The other class is where a suit is brought against defendants who, claiming to act as officers of the State, and under the color of an unconstitutional statute, commit acts of wrong and injury to the rights and property of the plaintiff, acquired under a contract with the State. Such a suit, whether brought to recover money or property in the hands of such defendants, unlawfully taken by them in behalf of the State, or for compensation in damages, or in a proper case, where the remedy at law is inadequate, for an injunction to prevent such wrong, or for a mandamus to enforce the performance of a duty, is not within the meaning of the eleventh amendment. In the case of Osborn vs. the Bank of the United States, one of the leading inquiries was whether an injunction could be issued to restrain a person who was a State officer from performing an official act enjoined by the statutes of the State. The question presented by that inquiry was discussed in a masterly manner, on the assumption that the statute of the State was unconstitutional, and it was held that in such a case an injunction would lie. In all these cases where state officers have been made defendants, they were doing what the law required them to do. It was not that they were exceeding the law; it was not that they were acting beyond its fair provisions; but that they were doing the very thing the State law commanded them to do; and that they were restrained from doing it upon the ground that the mandate of the State to do it was no mandate at all, because it was unconstitutional. Justice Lamar says:

"The case may then be said to fully establish the doctrine that an officer of a State may be enjoined from executing a statute of the State which is in conflict with the Constitution of the United States, when such execution would violate and destroy the rights and privileges of the complainants." I pause to say that it does not matter whether the unconstitutionality is by reason of provisions of the United States Constitution or the State Constitution. If the court has jurisdiction and must decide the question it is simply a question whether the authority under which the officer assumes to act is a lawful authority. I do not need, I think, to read more from that case. I want, now, to call attention to the latest expression, so far as I know, of the Supreme Court upon this question. The case cited yesterday, the Reagan case, the Texas case—I might stop to say that it has a bearing also upon the question of jurisdiction and the common interests of parties, because there the railroad company, upon which a fare rate had been imposed by a board of railroad commissioners, was made a defendant, and not only so, but it did what the Citizens' Street-railroad Company might do in this case—come in by a cross bill and ask the same relief.

The Court—The jurisdiction in that case rested upon a federal question, did it not?

DISCUSSING THE TEXAS CASE.

General Harrison—There was, of course, a federal question; but we have such a question here, even if the precedent was not of value upon that consideration. I do not know whether my friend, Mr. Ketcham, yesterday assumed that the attorney general of Texas was a member of this board of Railroad Commissioners. I think he did. If he did, it was a mistake. The attorney general was not a member of the board. He was sued as the attorney general and had nothing to do with the case under the law, except that this special law put upon him the duty of bringing certain suits to enforce certain penalties. I think that an assault upon the attorney general, the drawing of him "to the feet of the United States Court," would be a larger indignity than to so deal with the prosecuting attorney. This Texas law provided certain penalties for violation, very much like the penalties in this 3-cent-fare bill; some of which are to be prosecuted by individuals, whom we could not bring in here, and some of which run against the employes of the road who may decline to take a 3-cent fare, and some against the corporation itself, which may also be prosecuted. Of course, a prosecution against a corporation can only be satisfied by a fine, and your honor will see that this statute, which is under consideration here, runs on all fours with the penal provisions in this act in Texas. It imposes penalties upon the corporation and upon its officers, who may refuse to execute the law, or who may exact a larger compensation than is fixed by the law. In the Texas case the question of reasonableness was raised. That, of course, does not affect the matter that I am considering. It was averred that such fares were unreasonable and unjust, and set forth specific facts, and prayed a decree restraining the commission from enforcing the rates, and also restraining the attorney general from instituting suits, together with penalties for failing to obey such regulation. It was that relief that the court gave. The highest law officer of the State of Texas—there, probably, a constitutional officer—who, by law, was required to enforce these penalties, was restrained by the court. Let us see how the injunction ran: "And the defendant, Charles A. Culberson, acting as attorney general of the State of Texas, and his successors in office, be and they are hereby perpetually enjoined, restrained and prohibited from instituting or authorizing or directing any suit, or suits, action or actions, against the defendant railway company for the recovery of any penalties under and by virtue of the act of the Legislature of Texas."

Your Honor will notice that the taking of a larger fare was declared to be extortion and was made an offense, and that that offense was punishable by fine against the corporation. How does that differ from the case here? These commissioners are further perpetually restrained from serving any copies of state orders to the said Culberson, or any other party, or furnishing Culberson or any other party information of any character for the purpose of enabling him or any other party to prosecute suits, etc. The Supreme Court has decided the question as to the right of a court to compel a defendant to produce his books and furnish evidence against himself in an action of a criminal nature. The attorney general has called attention to some cases where the courts have declined to restrain criminal prosecutions, not upon such grounds as these, not upon any question as to a State being a party, but upon the broader, equitable consideration as to whether a case was made for injunction; and the courts have held in those cases that in a prosecution against a man for a crime or misdemeanor, the court would not intervene. He had a full remedy at law; he could raise the question of jurisdiction. But those cases are not at all like the Texas case, or like this case, where we have a multiplicity of suits. Here are cases which do invoke the intervention of a court of equity, and do afford a good basis on which to rest jurisdiction. Here is a case where the constitutionality of a law is contested, and where an accumulating number of suits for the enforcement of penalties involve the integrity of the property and the security of the bondholders.

I do not need to spend any time upon the objection that the bill is not supported by proofs. The bill raises constitutional questions. What proofs are we to present? The gentlemen have read from fare cases, where the question of reasonableness of the fare was made the basis of the bill. This is not such a case. We present here constitutional questions that can neither be supported by affidavit, nor overcome by affidavit, nor by declamation. We show by an averment that this railroad company separated from its franchise and toll rights is wholly inadequate as to security, and that the effect of this law is to impair that security. Is not this a familiar ground of intervention? Certainly it is to judges of the United States courts. When multiplicity of suits, threatening the integrity of the corporation, threatening the seizure of its cars, threatening the arrest of its employes, involving the proposition of bringing the property to an end are brought, does anybody contend that is not a case for equitable intervention; and that when a mortgage trustee makes to a court a showing like that that he is to be told to let these thousand cases go on, to let these penalties be sought, to let the prosecutor institute in every justice of the peace court in the county as many prosecutions as he can find facts to base them upon; let these judgments be entered and let the property be seized and sold. Is this sore of wrecking to go on? Is a court of equity to tell the suitor, who has a right to appeal to it, that he must stand by while that is done?

INTENT OF THE CONSTITUTION.

It is a most valuable help in constitutional or statutory construction if we can find that a particular constitutional provision was adopted to meet a recognized and well-defined evil. In other words, if we can find what it was aimed at, we shall have great help in construing its provisions; because it is a canon of construction that the intent is to take effect if it can be ascertained. I have no occasion, I think, to call the court's attention again to the provisions of our State Constitution which are involved here. One of them is a reservation in the bill of rights, a reservation intended to prevent favoritism and class legislation, a declaration by the people of this State, that they would not permit their Legislature to pass class laws; that they would require in legislation, justice and equality among all the citizens of the State. The great principle of the equality of the citizen was one of the inspirations of the revolution and is one of the granite cornerstones of every free government.

In Section 22, Article 4, the State has made a list of seventeen subjects as to which it declares the Legislature shall not pass any special laws. It follows that with a section providing that in all other cases the laws shall be general and of uniform application throughout the State, where they can be made so. That is an appeal to the legislative judgment, and it has been so construed generally by the courts, though some courts have insisted that the courts had the power of seeing whether the question might be dealt with by general legislation. It does not make special legislation constitutional upon subjects that may be dealt with by general legislation. That the courts cannot do. But it puts the question upon the conscience and/honor of the member of the Legislature. A member of the Legislature who votes for a special bill regulating a subject that he believes might be dealt with by general legislation, violates his oath as a member of the Legislature. But the court has said it cannot take away from the Legislature the consideration of this question, and if the Legislature has declared that a particular subject cannot be dealt with by general legislation—and it does so when it deals with it by special legislation—it must abide by the decision of the Legislature. I find, by looking at the constitutional debates, that as Section 22 was first reported to the convention there was contained in it a provision as to creating private corporations. Why was it not left there? Simply because the convention finally determined to give the Legislature power to create one corporation only by special law, and that was the Bank of the State of Indiana. * * *

In the address that went out with this Constitution to the electors, special stress was laid upon the fact that where a general law can be made applicable no special law can be passed. * * * I have read these extracts from the proceedings in the convention to show that in the opinion of the convention, as expressed there, one of the prime purposes, perhaps the first purpose, the first necessity, that had borne itself in upon the people of Indiana as a reason for founding a new Constitution was the evil of special legislation. I think, in discussing the construction that should be given to these provisions, we must construe them in the light of the fact that the people of Indiana called a constitutional convention to destroy the power of special legislation, to root out what had come to be regarded as an evil and a mischief of the first magnitude, opening the way to favoritism and corruption in legislation.

At this point the court took a recess for the noon hour, reconvening at 2 o'clock, when General Harrison resumed his argument.

IN THE AFTERNOON.

General Harrison Concludes His Long Argument.

After recess General Harrison continued as follows:

If your Honor please, in order to complete the subject about which I was speaking before adjournment, I should say that the old Constitution of Indiana did not contain any of the provisions of our present Constitution to which we have referred. The provision in the bill of rights restricting the power of the Legislature to grant special privileges or immunities to one class of persons was not contained in that Constitution, nor were there any restrictive provisions in it with regard to special legislation. This fact, I think, gives point and emphasis to all of these sections to which I have called attention as tending to show that they were all directed to cure one common evil. The thought that is found in all of these provisions is that there shall be equality in the making of laws. It is not enough that the courts administer laws equally. If equal rights are to be preserved the Legislature, as well as the courts, must defer to the proposition that there shall be no favoritism. Under our Constitution the Legislature is put under a strong obligation to legislate generally and impartially, so that all persons may enjoy the same privileges and immunities, just as this honorable court is under obligation, in the interpretation of laws, to exclude favoritism and partiality. As an examination of our old statutes will show, conspicuous among the abuses of special legislation were private incorporation acts. It was the most common direction for legislative favoritism to take. We are therefore to consider this in construing these corporate provisions. It is to be remembered, also, that under the decision in the Dartmouth College case, where charters were held to be contracts and to be within the provision of the Constitution of the United States prohibiting the states from impairing the obligation of contracts, that they should be formed under general laws, was made particularly conspicuous and particularly necessary.

EVIL IN PRIVILEGES.

Wherein did this evil lie as to the creation of corporations by special charter? It was not in the power to be a corporation at all. As Mr. Winter said, such powers were innocuous. The power to be—the bare, barren power to be a corporation—cannot be harmful to anybody. Therefore the constitutional provision intended to remedy an evil could not have been directed against something in which the evil did not lie. The evil lay in the powers that might be exercised by the corporation, in the discrimination which might be made between them, in the favor to certain parties to be a corporation and the denial of the like favor to others. I emphasize this point because, as we progress in the argument, it will help us, I think, to understand some of the decisions that have been alluded to to show how destructive of all the intent, of all the beneficial effects of this constitutional restraint, those cases are that hold these provisions of the Constitution to relate simply to the power to be a corporation. The evils, as I say, lay in their powers. A corporation that had no powers could not hurt anyone. To grant such favors by special acts was no discrimination. There were no immunities given. The discrimination enters when immunities, privileges and powers are given to the corporation. If these provisions are to be so construed as to remedy the evil against which they were aimed they must be so construed as to relate to the powers of the corporation and not to a barren creation. If this construction is adopted we have a constitutional fiasco. Nothing has been accomplished. The convention has failed entirely of its purpose if this limitation of the Constitution is to relate solely to the power to be a corporation. We render nugatory, we absolutely nullify the whole provision. To what extremities does that construction lead us? It leads to the conclusion that a general law having been passed for the organization of corporations, the legislature may then, by special acts, confer privileges upon, endow and regulate each one of these corporations separately, according to any principles of favoritism that the legislature may choose to adopt. Do my learned friends contend for such a proposition as that? I want to impress this fact upon your Honor. Whenever we limit the words used in this Constitution that corporations shall not be created by special law, but must be under general statute, to the creation alone of the corporation, we leave ourselves in this position: That the Legislature of Indiana, having by a general statute created corporations generally or corporations of particular classes, may then take up each one of those corporations separately, define its corporate powers and place or refuse to place such restrictions as it may choose upon the corporation. That is the position to which the contention of these gentlemen necessarily leads.

If you adopt the view of Judge Sawyer, that this provision relates simply to the power to be a corporation, we have no power of corporation at all. The power to be a corporation is a power conferred upon the corporators. "A, B, C, and D, are hereby authorized to be a corporation." In construing a constitutional provision like this the court must look forward; it must consider to what necessary conclusions the decision which is invoked by my adversaries in this case leads. We have a general statute in this State authorizing the incorporation of steam railways. That construction of the Constitution which limits this restriction to the creation alone would leave the Legislature full power to take up any one of our steam railroads in the State of Indiana and confer new and special powers upon it and to take up another one and withdraw powers that were given under the general law, and thus to endow with special privileges and immunities particular corporations, and to destroy others. We have two railways running between Indianapolis and Terre Haute. If this construction is right those railroads, having been organized under the general laws of this State, and this constitutional provision having expended itself in the act of organization, the Legislature is at liberty to terminate the charter of one of these roads by special act. The power to amend and repeal is reserved in the general railroad act. It is in the power of the Legislature of Indiana, according to this contention, to terminate the charter of the Indianapolis & St. Louis Railroad, to end its being, withdraw from it all corporate powers, and to allow the Terre Haute & Indianapolis Railroad, its competitor, to continue and to have the exclusive monopoly of transportation between Indianapolis and Terre Haute. Isn't that equivalent to conferring immunities and privileges upon the Terre Haute & Indianapolis Railroad by indirection? It eliminates, by a special act terminating the charter of its competitor, the competition under which it had previously operated. Is it possible that under the power of amendment that can be done?

ALSO CREATES MONOPOLY.

If there are two street railways in the city of Indianapolis, organized under the general street-railway law of the State, and if this constitutional provision has expended itself when the corporate organization has been accomplished, then the Legislature may, by special law, come in and destroy one of those corporations operating a line upon Pennsylvania street, and leave the other, operating a line on Delaware street, to go on. If it is not restrained as to regulations and restrictions, it may restrict the fare that shall be charged by one of those corporations, and not restrict the other at all. It may, in this way, create a monopoly. It may give the most odious class preferences and immunities to one corporation and deny them to others; so that I am justified in saying if this is the construction to be applied to our Constitution we have had a constitutional fiasco. If there is no restraint upon the Legislature as to those things I cannot exaggerate the momentous importance of such a question to the State of Indiana. If this doctrine is to be supported by judicial decrees in this State, and our legislatures have the power to destroy competing corporations, to endow one with particular powers and to place upon others restraints that are destructive, then we are without any protection in the Constitution against the evil which had as much to do as all others combined in making our people to reconstruct our Constitution. The gentlemen say, "restrict," "regulate." You may regulate one corporation out of existence. Once admit that the Legislature of Indiana has full power, by special laws, to regulate any particular corporation, and you have given to the Legislature the power to destroy. If I were not restrained I would say that such a construction was not only destructive, but absurd; that a court of law could not impute such a meaning to any body of men that had been assembled by a state to form a constitution. Such a rule would simply require a uniformity in the shell—that the platter should be of a uniform pattern, but that the dish served upon it may have as many forms as the fancies of a French cook.

CREATION OF CORPORATION.

Now, what is the creation of a corporation. Mr. friend Mr. Kern insisted that corporations in Indiana were not created at all, and never had been created; that the prohibition upon the creation of corporations by special law was exhausted when the Legislature passed general laws under which they might be organized, and that these general laws, not being creative laws, but laws authorizing the formation of corporations, did not create corporations, and, therefore, were not subject to any limitation. Under the old form the special charter ran that A, B, C and their successors, upon doing certain things, were authorized to form, or should become a corporation of a certain name. The general law provides, without naming A, B, C, or anybody, in particular, that any citizens of the State, of a given number, who have done certain acts, shall be a corporation. I want to speak with entire respect of every argument that is presented by respectable counsel, but I cannot refrain from saying that this distinction is without any support, either in reason or authority. These are uncreated companies—every corporation in the State—according to Mr. Kern. I have heard a good many things said of corporations—that they had no souls, but that they were uncreated creatures, or that they were self-created creatures, I have never heard before. It is an interesting suggestion in philosophy, one that Darwin would have been glad to avail himself of, as an illustration of a self-creative power. Not created by law, but have evolved themselves. They have themselves spoken the fiat that has created them. The fallacy, the weakness, the absurdity of such a position lies in the very statement of it. There is not a corporation in Indiana and cannot be one that is not created by the State, distinctly created. What is the creation? What did the constitutional convention have in mind? It was the form of the thing; it was the body of the corporation; it was that aggregation of powers that constituted it; that gave it its body, its functions, the things it could do. It was not an inanimate thing, without power, without functions, but the creation was the making of a corporation, and the making of it involved necessarily the functions.

Let us look at this particular law, at the law applicable to this case. In 1861 the Legislature passed a general law for the incorporation of street railways. Mr. Kern says this company was not created by that law, because it did not come into existence until 1864, three years after the law was passed, and therefore it could not be created by it. If your Honor please, that law takes effect as long as it is in existence, and acts and speaks anew each time that any body of persons, complying with its provisions, organize as a corporation.

GENERAL 1861 LAW.

What was involved in that statute? It was a general law. It applied to all the cities and towns of the State of Indiana. It did not simply provide a way by which a street-railway corporation might be organized, but it defined its powers and functions, went into the manner of grade and gauge and the method of construction and into many details of that kind, and made all of those details applicable to every city and town in the State of Indiana. Under the twenty-third section, the Legislature here exercising that judgment which, under the Constitution, was committed to it, declared that this was a subject that was capable of being dealt with by general legislation. Therefore, if the declaration

stands, I contend that the court is at full liberty in considering this question, and that it cannot be interposed, that here is a subject to which general legislation is not applicable. That suggestion can only be made when the Legislature passes a special act relating to a particular topic. When they have refrained from doing that, and under their constitutional obligation to judge of this matter, have said that the creation and regulation of street railways in the State of Indiana is a subject as to which a general law may be made applicable, it stands so here, before this court, and it cannot be contended that it is a case for special legislation. The Legislature of Indiana has attempted in every case where it has endeavored to amend that law to use the form of general legislation. There is nothing in any of these amendments that can be construed to be a legislative declaration that this subject may not be dealt with by general law. The Legislature has attempted to deal with it by classification, not by special law intended to be such. I repeat the declaration, and ask your Honor's serious attention to it, that this is a case where, under Section 23, the Legislature has declared that general legislation is applicable, and that it has never passed any law relating to street-railway companies that did not continue to express the belief that it should be acted upon by general laws. We have a law as to suburban railways. It is that in cities that, by the last preceding census, have 100,000 population—they have passed this particular amendment which states that in cities having a population of 100,000 or more, by the census of 1890—so that the Legislature has attempted to deal all along with this as a subject that was capable of general legislation, and has attempted to introduce classification. If they had intended to deal specially with this subject, they would have said that in the city of Indianapolis the street-car fare would be 3 cents. If they had intended to deal with it specially in the suburban railway act they would have specified suburban railways entering the city of Indianapolis. But they have attempted to use the doctrine of classification, which is applicable to general legislation. So that I say again, that the Legislature of Indiana has declared that the matter of creating street-car corporations and regulating and managing them is one that may be dealt with by general law.

POWER TO REPEAL.

I want to say a word or two more upon this power to amend or repeal. Unless the power to amend or repeal is reserved either in the act itself or in the Constitution—and we have no such reservation in the Constitution—it becomes a permanent and perpetual contract, and the State can no more alter or change it that can the corporation itself. The power to amend or repeal is reserved here. How? In a general law. The power reserved is that the Legislature reserve the power to amend or repeal this act. When the Legislature had declared by passing this law that it was a subject capable of being dealt with by general law, and had dealt with it by general law and had reserved the power to amend or repeal in that law, is not the power reserved distinctly to amend or repeal a general law, and not by special legislation? The two things, from a contract point of view, are widely different. In the case before Judge Woods and Judge Baker, we said that the Legislature had the power to repeal or amend this act, and the question was asked, Where is your guarantee of life? My answer was, "It is in the fact that no favoritism can be used against us; that no hysteria or spite can lead a Legislature to pass special legislation as to this corporation, but whatever they do to us they must do to all the corporations of the State; there is our guarantee and strength." There I stand to-day, saying that the reservation of repeal or amendment was a reservation to deal with us upon the principles of general legislation, and not upon the principles of special legislation. Right here I present a federal question. There were two methods of dealing with this question. One was to give the Citizens' Street-railroad Company of Indianapolis a special charter, and reserve the right to amend or repeal it, which would be to deal with the question specially. Another was to hold that this was a subject of general legislation under the Constitution and to reserve the same power in a general railroad law of this State, to amend or repeal by general legislation. It is one thing to let the Legislature have the power to terminate the corporate life of this company by a special act; it is quite another as to its value as a contract privilege, to let the Legislature have the power to annul the charters of all the street railways in the State of Indiana. Then the attention of all the members of the Legislature is challenged to this matter. Otherwise it may be simply influenced by local pressure, or local considerations. I stand with confidence upon the suggestion that we had under that general law a charter, and that the Legislature can only amend or repeal it in the same way that it gave it, by general legislation. It seems to me that the position is impregnable. Indiana is a great railroad State. Millions of capital are invested in its steam railways. They are organized under a general law, which is subject to repeal or amendment. The whole security of these corporate investments is that they are defended against favoritism, by the fact that they cannot be touched in their corporate life unless the whole class of corporations is touched. I do not deprive the Legislature of power. Let it reconsider the question whether this is a subject for general or special legislation. Let it repeal the law of 1861; let it end all corporations under it and start again upon a revised conclusion that these things are to be dealt with by special laws. But it cannot be dealt with in both ways. Either the general law or the special amendment must be rejected, and the general course of the courts would be to sustain the law and reject the unconstitutional amendment.

THE 1897 AMENDMENT.

I come to this amendment itself. It is that in all cities having a population of a hundred thousand or more, by the census of 1890, 3-cent fares should prevail. I do not controvert at all, the proposition upon which Mr. Curtis labored a good deal, that there may be general legislation by classification. It might be reasonable to have one fare in one city and another fare in another city. But that classification must not be arbitrary. Suppose Terre Haute had a population of 40,756; would it be general legislation to say that in all cities having a population of 40,756, by the census of 1890, 3-cent fares should be charged? Plainly not. Whatever changes might take place, no other city in the State could ever come to have that population in 1890. It is just so here. There was but one city in Indiana that had 100,000 population in 1890, and no other city could ever come into the condition. Terre Haute, Fort Wayne, Evansville, Vincennes, Muncie, Anderson and Marion might all come to have a hundred thousand population, but they could not be included in this law, because they did not have a hundred thousand population by the census of 1890. So that this legislation is both local and special. In some of the states a classification has been accepted where it was declared that in all cities having a certain population, by the last preceding census, certain things should apply. That was upon the theory that the words "last preceding census" did not relate to the time of passing the act, but related to those future times when a city, by any census, attained the population. Our own State, in the case of Mode vs. Beasley—that was a county seat case—declared that this language related to the time of the passage of the act and therefore that it was special legislation, even though it said by the last preceding census.

General Harrison referred to several authorities in support of his conclusion. Referring to the New bill, recently passed by the Legislature, he said:

The effect of this legislation is that in 1901 the whole matter shall be the subject of competition and the question of fares may be settled at that time. If anyone bid a 2-cent fare they would probably get the contract.

If your Honor please, I submit, in conclusion, that it would be a grave misfortune; it would be a legal retrogression that the people of this State would greatly mourn and by which they would suffer irremediable loss if these provisions of their Constitution are to have the construction that all these railroads, all these mining and manufacturing companies created under general laws, are now subject to be restricted at the whim of the Legislature. By an adherence to the rule as plainly laid down in the Constitution, by reasonable interpretation of its provisions, the legislature has full power to deal with these questions by general law equally and fairly. It has the power to deal with all corporations by general law and with all special matters by special law.

Perhaps I ought to say that the conditions and circumstances surrounding this case make it exceedingly desirable that some immediate ruling, if possible, in the nature of a special restraining order, which it is entirely in the power of your Honor to so frame as to protect everybody, should be granted at as early a day as possible.

The Court—I shall try to dispose of the case as soon as I can. Possibly to-morrow.

AMUSEMENTS.

The greatest personal and professional triumph that has been made by John Drew has been in the comedy, "Rosemary," by Louis N. Parker and Murray Carson. Mr. Drew presented "Rosemary" at the Empire Theater, New York, for over 150 nights to crowded and fashionable audiences. Twice was Mr. Drew's time at the Empire extended, but contracts, which it was necessary to fulfill caused his engagement there to end, only recently. This afternoon and to-night Mr. Drew will make his first appearance here in over threee years, presenting "Rosemary" at English's with the same cast and surroundings which the play enjoyed in New York. In Mr. Drew's company are Miss Maud Adams, who has been his leading lady ever since he began to star; Harry Harwood, Daniel Harkins, Arthur Byron, Frank E. Lamb, Graham Henderson, Ethel Barrymore, Annie Adams and others. "Rosemary" will have large audiences at both performances to-day. The company arrives at 10 o'clock this morning and leaves at midnight to-night for St. Louis.

The two performances to-day at the Grand will conclude the engagement there of "Darkest America." The theater was crowded again last night. Monday afternoon the Holden Comedy Company will open at the Grand for a week. Four plays will be given during the week.

In Hoyt's "Contented Woman" company are several of the "Milk White Flag" favorites, notably Clarisse Agnew, the pretty and clever little dancer, who also sings new songs, and Belle Archer, who played the widow in the "Flag" here last September. Mr. Hoyt has given his beautiful wife a part to play which demands the richest and most stylish gowns and gems worth a fortune. Mrs. Hoyt has excellent taste in dress. She designs all her own gowns. Her husband is a paragon of perfection, in one respect at least. He never demurs at any dressmaker or millinery bill and she has carte blanche at Tiffany's. The ladies will be interested in seeing how a woman thus favored attires herself. The opportunity presents itself at English's Tuesday and Wednesday evenings next. There will be a matinee Wednesday. Seats go on sale this morning at the Pembroke.

Sam T. Jack's "Tenderloin" company, the latest of his numerous entertainments, will be seen at the Empire next week.

Louise Rial a Divorcee.

CHICAGO, April 16.—James B. Rial was to-day granted a divorce from Louise E. Rial, the actress. Robert Drouet, the actor and playwright, was named as co-respondent. Mrs. Rial is now living in New York.

Actor Mason Dead.

NEW YORK, April 16.—Joseph L. Mason, the actor, died at his home in Winfield, L. I., to-day, aged sixty-four years, of pneumonia, contracted in Chicago, where he was playing in the "Cherry Pickers" company.

The "Lone Fisherman" Dead.

BALTIMORE, April 16.—James S. Moffit, the original Lone Fisherman in "Evangeline," died here to-day at the Johns Hopkins Hospital, after an illness of four weeks.

A Very Close Bowling Game.

The bowling contest at the Deutsche Haus last night between the German-Americans and Social Turners was won by the former by a score of 981 to 980. The individual score was as follows:

German-Americans—Hall, 93; Goepper, 102; Lieber, 111; Wallick, 108; Marvin, 75; Chapman, 69; Kipp, 123; Baker, 102; Lige Martindale, 75; John Martindale, 123; total, 981.

Social Turners—Zwicker, 108; Neubacker, 102; H. Filken, 70; Kappler, 84; Birk, 96; Hirsch, 93; L. Filken, 120; Mass, 111; Loss, 96; Volrath, 80; total, 980.

CITY NEWS NOTES.

"The Empty Sepulchre" will be the subject of Dr. Lasby's Easter sermon at the Central-avenue Methodist Episcopal Church to-morrow morning.

An Easter cantata entitled "Mary of Bethany" will be given by the girls of the Reform School on Easter Sunday at 3 o'clock in the afternoon.

Rev. Dr. Coultas's Last Sermon.

Rev. Dr. Coultas, pastor of Roberts Park Church, will preach his farewell sermon to-morrow morning. He was appointed by Bishop Andrews at the late M. E. conference held at Newark, N. J., to the First M. E. Church at Morristown, N. J.

Bank Ex-Cashier Arrested.

KANSAS CITY, April 16.—George A. Taylor, the former cashier of the defunct Argentine Bank, who mysteriously disappeared a month ago, returned home yesterday, and to-day voluntarily submitted to arrest on a warrant charging him with illegal banking. Taylor was arraigned this afternoon and given a preliminary hearing. Friends went on his bond. The warrant for Taylor's arrest was sworn out by a former depositor, who charged that the bank was in a failing condition when Taylor received a deposit from him. Taylor had been in New York looking for work. The bank failed last summer and caught many working people.

"Days" at the Nashville Centennial.

NASHVILLE, Tenn., April 16.—The executive committee of the centennial exposition has set apart the following days for additional national events: Oct. 11, Vanderbilt day, on which the statue will be unveiled and Hon. Chauncey M. Depew will speak; June 12 and 13, Epworth League days; June 16, Y. M. C. A. day; June 17, Knoxville day; June 10, Alabama press day; May 13, Wilmington, N. C., day; May 24, Kentucky day. Governor Bushnell has been invited to be present on Ohio day.

College Building Burned.

BERKELEY, Cal., April 16.—Fire at the University of California this afternoon destroyed the building occupied as the College of Agriculture. The building contained expensive chemicals and laboratory apparatus. The loss is estimated at $40,000.